Supreme Court, U.S.
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No. 99-1970

IN THE SUPREME COURT OF THE UNITED STATES

LUIS FUENTES, PETITIONER

v.

WAGNER, WARDEN; KONEMANN, CORRECTIONAL OFFICER; KLEEMAN, CORRECTIONAL OFFICER; DONATO, CORRECTIONAL OFFICER; BROWN, SERGEANT; WERST, ASSISTANT WARDEN; AND BERKS COUNTY, PENNSYLVANIA, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

The issue in this case is whether a 42 U.S.C. § 1983 action brought by a pretrial detainee who alleges the use of excessive force by prison officials in violation of the detainee's Fourteenth Amendment substantive due process right to be free from punishment should be governed by the "objective reasonableness" standard applied to Fourth Amendment questions, or the "shocks the conscience" standard that has recently been applied in police pursuit cases. As the Petition for a Writ of Certiorari demonstrated, there are fundamental conflicts regarding this issue among the federal circuit courts of appeal and, indeed, even among trial courts within particular circuits. *See* Pet. at 7-16. This Court should grant certiorari to resolve these conflicts by providing a uniform standard that protects pretrial detainees against the unconstitutional imposition of punishment.

In opposing the Petition, Respondents suggest that *County of Sacramento v. Lewis*, 523 U.S. 833 (1998), resolves the question this case presents to the Court. They are wrong. *Lewis* arose from a high-speed police pursuit that accidentally resulted in the death of a motorcycle passenger. The question before the Court in *Lewis* was "whether a police officer violates the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender." *Lewis*, 523 U.S. at 836.

The factual and legal issues in this case are entirely different. This case arises from correctional officers' intentional application of force against a detainee confined to prison by the state. *Lewis* did not even purport to address these circumstances. To the contrary, the *Lewis* Court expressly distinguished "the markedly different circumstances of normal pretrial custody and high-speed law enforcement chases." *Id.* at 851. And even in the context of a violent prison disturbance, the Court noted carefully that its prior decisions had been restricted to the Eighth Amendment. *See Lewis*, 523 U.S. at 852 ("albeit under the Eighth Amendment"). These careful distinctions are consistent with the Court's prior two decisions reserving the issue of the proper test to apply to pretrial detainee excessive force claims. *See Whitley v. Albers*, 475 U.S. 312, 327 (1986) (noting that the Court's holding regarding inmate excessive force claims "impl[ies] nothing as to the proper answer" to the question of pretrial detainees' rights under the Due Process Clause); *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989)

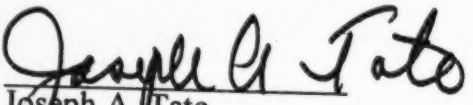
(declining to define the parameters of detainees' protection against the deliberate use of excessive force). Thus, this case presents the Court with an opportunity to resolve the very question it has set aside at least three times previously.

Finally, while Respondents have acknowledged (as they must) the existence of conflicting legal tests prior to the *Lewis* decision in May 1998, they argue that the lower courts' confusion predates *Lewis*. Resp. at 10-15. Again, they are wrong. Since *Lewis* came down, the lower courts have continued to issue opinions applying vastly different tests to pretrial detainee excessive force claims. For example, the Seventh Circuit recently held that the appropriate test for pretrial detainee excessive force claims is "'whether the officials behaved in a reasonable way in light of the facts and circumstances confronting them.'" *King v. Price*, 2000 WL 831802 at *2 (7th Cir. June 26, 2000). Likewise, the Ninth Circuit has endorsed a four-part test that turns on reasonableness. *See Hoskins v. Plummer*, 1999 WL 637801 at *1 (9th Cir. 1999). Even trial judges sitting in the very same district have applied completely different legal standards to pretrial detainee claims. *Compare Uerling v. Piccinini*, 1999 WL 225981 at *2 (N.D. Cal. April 12, 1999) (holding that a pretrial detainee's due process claims turned on "the reasonableness of the officers' actions in light of the circumstances") *with Moore v. Martinez County Jail*, 1998 WL 602113 at *2 (N.D. Cal. Sept. 4, 1998) (applying the Eighth Amendment standard). Another federal court has rejected the Due Process Clause entirely and held that pretrial detainee claims are governed directly by the Eighth Amendment. *See Thomas v. Sawyer*, 1999 WL 155704 at *2 (N.D. Tex. Mar. 11, 1999). Significantly, not one of these cases adopts the shocks-the-conscience test approved by the Third Circuit, and none cites to *Lewis* either.

CONCLUSION

If anything, the Respondents' Brief in Opposition to Petition for a Writ of Certiorari underscores the need for this Court to resolve the marked conflict among the federal courts and to protect pretrial detainees from the use of excessive force that amounts to punishment. Accordingly, Petitioner respectfully requests that the Court grant the Petition for a Writ of Certiorari.

Respectfully Submitted.



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